



## COUNTY ADMINISTRATOR'S OFFICE

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C.H. HUCKELBERRY  
County Administrator

October 16, 2008

Federal Communications Commission  
445 Twelfth Street, NW  
Washington, D.C. 20554

**Re: Response to T-Mobile's Comments, Federal Communication Commission Zoning  
Preemption Proceedings WT Docket No. 08-165**

To Whom it May Concern:

Pima County, Arizona is cited in a declaration from the T-Mobile Western Regional Development Director accompanying the comments of T-Mobile, USA, Inc. regarding the petition of the wireless group, CTIA, for Declaratory Ruling by the FCC Wireless Telecommunications Bureau to clarify provisions of Section 332(c)(7)(B) and Section 253 regarding local review of proposed wireless facilities.

Pima County, which through zoning regulates the unincorporated area of the county surrounding the City of Tucson and which as of July 2007 has an estimated population for the unincorporated area of 360,365, has adopted zoning regulations that both comply with the Telecommunications Act of 1996 and are responsive to the extent possible under those rules with the public's desire for safe facilities, reasonable design considerations and input into land use regulatory process.

Specific to the allegation by T-Mobile in its comments, in the five year time frame cited by the declaration, Pima County has processed or is in process on 13 T-Mobile applications for permits for wireless communication facilities, either co-locations or monopoles, all since 2006. T-Mobile has applied for and received six of these permits. One more has been approved but just requires a development plan. Three are in the application phase but the applicant has chosen not to follow through to completion, one was withdrawn by T-Mobile, one was closed as it could not meet a basic requirement and as stated by T-Mobile, one was denied and is in litigation.

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Also of note is that Pima County staff currently has approximately 30 applications from other providers in the docket, and it is processing each application appropriately and in a reasonable time frame. Due to this volume and staffing constraints, the County has successfully worked out with the applicants to process a third of the total per month for three months.

Pima County does not require a pre-application meeting, does not require a variance, has consistent regulations throughout the unincorporated county and except for certain monopolies and most facilities in our rural and residential zones, only requires a noticed administrative hearing before our hearing administrator with a notice period of appeal to the elected Board of Supervisors. Communication towers are allowed in all zones, and the zoning code favors co-locations over monopolies wherever possible.

The Pima County process for siting cell towers is through the use of a conditional use permit. Most require one administrative hearing as noted above which we call a Type 1 process. Like all conditional uses in the County, there is a time limit on the ability for the hearing administrator to continue the hearing on an application. Approvals of Type 1 permits can be appealed by the public to the elected officials but all appeals must be filed within 30 days. Towers which are to be located in rural and residential zones require a Type 3 process, meaning the administrative hearing officer acting this time as staff makes a report and recommendation to the Planning and Zoning Commission which holds a public hearing and makes its recommendation to the elected Board of Supervisors. The Board makes a decision after holding its public hearing. Findings are included in the decision making process, and appropriate conditions on the conditional use permits are typically included as part of an approval process.

The approximate time frame for processing a Type 1 permit is approximately 60 days including the 30 day period after approval during which a member of the public could appeal. It would be longer if there was actually an appeal to the Board of Supervisors, but that happens only upon occasion. A Type 3 process should require approximately 100 days. The major exception to these time frames is either an incomplete submittal or if the applicant is unable to adequately respond to a question raised at public hearing, the latter causing a continuance.

Attached are two excerpts from the Pima County Zoning Code. Exhibit A is the excerpt specifically on communication towers. Exhibit B is the excerpt on the conditional use process and as noted above, either a Type 1 or Type 3 process is used for most communication towers.

In 2006, Pima County worked extensively and successfully with representatives of the wireless industry and with engineers from the University of Arizona, among others, to update and fine-tune our regulatory framework. We strongly believe that Pima County's actions on

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wireless facilities fall within a very reasonable time frame as provided for in Federal law. Additionally, the County has certainly not imposed any unreasonable barriers to siting of wireless facilities. Federal law explicitly protects a local government's authority to regulate the placement, construction and modification of personal wireless service facilities. Zoning laws by their very nature require public processes, and in such processes, the public has the right to make its thoughts and feelings known.

In closing, there is clearly a balancing act between the process giving the public the right to be heard on any land use including wireless facilities near or within view of their living room and the need to build communication facilities to serve the growing need of the citizenry at large. Federal law already requires that local government act on a request in a reasonable time frame, which Pima County does, despite the reference by T-Mobile in its comments. It is not reasonable, however, to effectively shut the public out of a land use process with a one size fits all time frame advocated by T-Mobile and CITA.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/jj

Attachments

- c: The Honorable Chairman and Members, Pima County Board of Supervisors  
John Bernal, Deputy County Administrator - Public Works  
Christopher Straub, Chief Civil Deputy County Attorney  
Nanette Slusser, Assistant County Administrator for Policy - Public Works  
Carmine DeBonis, Development Services Director  
Arlan Colton, Planning Official, Development Services



## EXHIBIT A

### H. Communication towers:

#### 1. Purpose:

- a. To maximize the use of existing communication towers to reduce the number of new towers needed.
- b. To minimize the adverse visual effects of towers through careful design, siting and screening.
- c. To avoid potential damage to adjacent properties and occupied structures from tower failure through engineering and careful siting of tower structures.

#### 2. Applicability:

- a. Communication towers are permitted in any zone subject to the requirements of this subsection.
  - b. Lattice-type communication towers intended for commercial uses are not permitted within public rights-of-way.
  - c. Towers over 250 feet in height are permitted only in commercially or industrially zoned areas and shall comply with FAA painting and lighting (over 199 feet in height) standards to provide for aircraft safety.
  - d. Communication towers in all zones require approval of a Type III Conditional Use Permit, except for the following:
    - 1) Communication towers in CB-2, CI-1, CI-2, CI-3 and MU zones (See Section 18.37.020).
    - 2) Wireless communication monopoles and wireless communication antennae, other than lattice-type, in the CB-1 and CPI zones. Wireless communication monopoles in the CB-1 zone require a Type I Conditional Use Permit.
    - 3) An antenna attached to an existing, non-residential building with a maximum height of 16 feet (above roof line or highest point of the building), and a communication tower equipment area obscured from public view. The total height of the structure, including the antenna, shall not exceed 200 feet.
    - 4) A co-located, flush-mounted antenna(s) attached to an existing, permitted tower or existing utility pole, or attached to an existing, conforming structure within a public right-of-way, provided the co-located antenna does not increase the height of the existing structure more than 16 feet. If a new communication tower equipment area is added or an existing communication tower area equipment is expanded, a Type I Conditional Use Permit is required. Equipment placed inside a vault, or equipment placed inside an existing walled or existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) is exempt from the conditional use permit requirement.
    - 5) A new communication tower replacing an existing communication tower or utility pole provided the new tower meets all the following conditions:
      - i) Replaces the existing tower or pole;
      - ii) Is located not more than six feet from the existing tower or pole and is within the same alignment relative to property boundaries and adjacent poles;
      - iii) Is no higher than 16 feet beyond the height of the existing tower or pole, not to exceed a maximum total height of 200 feet;
      - iv) The diameter of the replacement pole, not including appurtenances, does not exceed the diameter of the existing utility pole, not including appurtenances, by more than 60 percent or 14 inches, whichever is greater.
      - v) Antenna(s) are flush-mounted.
      - vi) A communication tower equipment vault is used.
- If a communication tower equipment area is added or expanded, a Type I Conditional Use Permit is required. Equipment placed inside a vault, or equipment placed inside an existing walled or

existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) is exempt from the conditional use permit requirement.

6) A flush-mounted antenna(s) attached to an existing, permitted structure and an associated communication tower equipment area that was approved through a publicly-noticed board of supervisors process where notification was equivalent to that for a Type III Conditional Use Permit. Equipment placed inside a vault, or equipment placed inside an existing walled or existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) is exempt from the conditional use permit requirement.

7) A communication tower together with any antenna and associated communication tower equipment area used solely for internal communication purposes at a utility substation so long as the height of the communication tower was specified in the legal advertisement and public notice for any required utility substation permit hearing. The structure and its height shall be shown on the substation site plan.

8) New antennas replacing existing antennas located on a permitted communication tower or utility pole so long as no changes are being made to the existing tower or pole, the communication tower equipment area is not being expanded or added, and the replacement antennas are of the same type as the existing antennas.

### 3. Application procedures:

a. A development plan is required for a wireless communication tower and appurtenances and a communication tower equipment area, except for the following, for which a site plan may be submitted in lieu of a development plan:

1) A co-located antenna attached to an existing structure or replaced tower or pole, so long as no communication tower equipment area is added or expanded.

2) An antenna attached to an existing building so long as any communication tower equipment area is hidden from public view. The existing development plan for the building, if any, must be amended to show the added structures.

3) Replacement poles and communication tower equipment areas within public rights-of-way.

b. The applicant shall submit with the development plan or site plan a written statement from the Federal Communications Commission and the Federal Aviation Administration that the proposed tower and its communications use by the applicant complies with applicable regulations administered by those agencies, or that the tower is exempt from those regulations.

c. The applicant shall submit with the development plan or site plan before and after photo simulations showing the tower and surrounding area.

d. The applicant shall submit a license agreement to use the public right-of-way and approval from the department of transportation as conditions of development plan approval for any communication tower or co-located antenna and associated communication tower equipment area to be located in a public right-of-way. If no development plan is required, such agreement and approval shall be conditions of site plan approval.

e. The applicant may be required to disguise, conceal or camouflage a tower and/or antenna to ensure visual compatibility with the surrounding area.

f. The minimum notification area for communication towers requiring a conditional use permit hearing is 1,000 feet in the IR zone.

### 4. Development standards:

a. Lattice-type communication tower and associated equipment area not within public right-of-way:

1) Minimum site area: None.

2) Minimum lot setbacks: A distance equal to the height of the tower.

b. Monopole communication tower and associated communication tower equipment area within the public right-of-way:

1) Minimum site area: None.

2) Minimum setbacks - tower: Fifty feet from any residence or from the setback line from where a future residence would be located.

c. Monopole communication tower and associated communication tower equipment area not within public right-of-way:

1) Minimum site area: None.

2) Minimum lot setbacks - tower:



- a) Adjacent to a residential zone or use, or within the IR zone: A distance equal to the height of the tower.
- b) Adjacent to a non-residential zone: A minimum of 50 feet to all lot lines except internal lot lines within the boundaries of an approved development plan. Exceptions to this requirement for side and rear setbacks may be obtained through an approved Modification of Setback Requirements request.
- 3) Minimum lot setbacks - communication tower equipment area: The communication tower equipment area shall meet the setback requirements for accessory structures in the zone in which the tower is located.
- d. Co-located antenna(s) attached to an existing, conforming structure including replacement poles and associated communication tower equipment area within the public right-of-way:
  - 1) Minimum site area: None.
  - 2) Minimum site setbacks: None.
- e. An antenna(s) attached to an existing, permitted structure, including replacement poles, and associated communication tower equipment area not located within the public right-of-way:
  - 1) Minimum site area: None.
  - 2) Minimum lot setbacks: None.
- f. Wireless communication monopoles and lattice towers located within 200 feet of a designated scenic route shall be painted a shade of light blue or light gray, so long as this is not in conflict with FAA standards. If a new utility pole is used for the communication tower and the new utility pole replaces an existing utility pole which is one of a line of utility poles, then the color of the replacement utility pole and the new antennas shall match the color of the adjacent utility poles.
- g. Towers shall be located with access to a publicly maintained road.
- h. Landscaping shall be in accordance with Chapter 18.73 and shall screen the communication tower equipment area from adjacent residential uses and public streets. This requirement is not applicable within public rights-of-way.
- i. Barbed wire may be used on fences and walls for security purposes in nonresidential zones if the wire is a minimum of six feet above ground level.
- j. The light source of any outdoor security lighting shall not be visible from adjoining residential properties and shall be arranged to eliminate glare towards adjoining residential properties.
- k. A minimum of one parking space shall be provided for each tower either within the site area or off-site if demonstrated to be safe and reliable.
- 5. Termination of Use. Any tower, structure or antenna that ceases operation for a period of 12 consecutive months shall be deemed to have terminated use and shall be removed within 90 days at the property owner's expense.

## EXHIBIT B

### Chapter 18.97 CONDITIONAL USE PROCEDURES

#### 18.97.010 Purpose.

#### 18.97.020 Definitions.

#### 18.97.030 Procedures and requirements.

#### **18.97.010 Purpose.**

Purpose. This chapter provides procedures and standards for the review and approval of conditional uses, as designated within the zoning classifications of this code. Conditional uses provide zoning flexibility, but, due to their potentially adverse impacts, require the review processes established in this chapter. (Ord. 1985-141 § 1 (part), 1985)

#### **18.97.020 Definitions.**

A. Certain terms used in this chapter shall be defined, for the purpose of this chapter only, as follows:

1. Affected property owner: Any owner of property located within the required radius for written notification of public hearing.
2. Conditional use: A use which, due to its greater potential for nuisance or hazard than other uses of the zone, has its establishment in a zone conditional upon the procedures and standards of this chapter.
3. Hearing administrator: A county hearing officer, not being an employee of the planning and development services department, as appointed by the board of supervisors. (Ord. 1986-127 § 1 (part), 1986; Ord. 1985-141 § 1 (part), 1985)

#### **18.97.030 Procedures and requirements.**

##### A. Scope.

1. A conditional use may be requested by submitting a conditional use permit application to the planning and development services department. Issuance of the permit is subject to the requirements of this chapter and any requirements of the zone in which the use is being requested;

2. Application for a permit may only be made by the property owner of the subject property or an agent for the property owner.

B. Staff Consultation. The applicant is advised to consult with county staff concerning potential requirements prior to submittal of the application.

##### C. Application.

1. The complete application shall include, at a minimum:

- a. A legal description of the property,
- b. A list, by name and title, of all ownership interest in the property (e.g., individual, corporation, trust or limited partnership), in accordance with

A.R.S. § 33-506,

- c. A letter of authorization for an agent,
- d. Applicable permit fees, in accordance with the adopted conditional permit fees schedule,
- e. A preliminary development plan in accordance with Section 18.91.030 (Rezoning), which shall show compliance with all other requirements of the zone in which the use is proposed to be located,
- f. A floor plan detail, when the request pertains to interior access or use;
- g. A biological impact report, including a biological assessment concerning endangered or threatened species, for Type 2 and Type 3 conditional use permit requests.

2. Refer to written departmental policies for application specifics;

3. Incomplete applications shall not be processed;

4. Hearing notification maps shall be prepared only by the department.

**D. Permit Hearing Procedure Types.**

1. Scope: This subsection establishes the specific procedure types for conditional use applications. The applicable permit procedure shall be referenced after each conditional use in this code.

2. Type 1 procedure: Public hearing by the hearing administrator, with a minimum notification area of three hundred feet from the subject property, except that notice shall be expanded to include owners of property within one thousand feet of the subject property if existing zoning of the subject property is RH, GR-1, SR or SR-2.

3. Type 2 procedure: Public hearings by the hearing administrator and board of supervisors, with a minimum notification area of three hundred feet from the subject property, except that notice shall be expanded to include owners of property within one thousand feet of the subject property if existing zoning of the subject property is RH, GR-1, SR or SR-2.

4. Type 3 procedure: Public hearings by the planning and zoning commission and board of supervisors, with a minimum notification area of three hundred feet from the subject property, except that notice shall be expanded to include owners of property within one thousand feet of the subject property if existing zoning of the subject property is RH, GR-1, SR or SR-2.

**E. Public Notice.**

1. A minimum of fifteen days prior to a hearing, the planning and development services department shall provide notice by:

- a. Posting of the subject property to be considered at the hearing; and
- b. Mailing written notice to all property owners within the applicable notification area;

2. Failure of notice: The unintentional failure to give written notice of the unintentional omission of the name of a property owner shall not invalidate an action taken at a hearing.

3. The applicant is responsible for written notice to the United States Fish and Wildlife Service of the pending request. The applicant shall provide staff with written proof of notice to the United States Fish and Wildlife Service at least 15 days prior to the date of the public hearing.

**F. Type 1 Permit Hearing.**

1. Scope: Within thirty days of proper application, a public hearing shall be held by the hearing administrator on the merits of the application.

2. Public notice: In accordance with Section 18.97.030E.

3. Hearing:

a. After proper public notice, the administrator shall hold a public hearing on the application, at which all interested parties may appear and shall be heard;

b. The administrator may continue a public hearing, for a definite time not to



exceed three months, on own initiative or at the request of the applicant or affected property owners;

c. The administrator shall require that the petitioner present information adequate to illustrate that the proposed use meets the following standards:

- 1) It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated,
- 2) It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, the legal permitted uses of such property,
- 3) It has adequate accessibility to the county road network,
- 4) It has sufficient off-street parking and loading facilities, that will be developed in accordance with county engineering standards,
- 5) It will meet county standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses and other forms of air pollution, liquids and solid wastes,
- 6) Hours of operation will not be detrimental to adjoining residents,
- 7) Landscaping will be fully in conformance with zoning code regulations;

d. The administrator may require that additional information be presented.

4. Decision of the administrator: Approval of a conditional use permit shall be subject to the preliminary development plan and any other reasonable requirements deemed necessary by the administrator. The permit shall not be effective until thirty days after the decision or when all requirements of approval have been satisfied, whichever is later.

5. Findings: A report on the findings of the administrator and conditions of the permit shall be available for public inspection within five days of the administrator's decision.

6. Appeals:

a. Any appeal to the board of supervisors of the decision or conditions imposed by the administrator shall be filed within thirty days by the applicant or affected property owners;

b. A public hearing by the supervisors shall be required in accordance with Section 18.97.030G.

G. Type 2 Permit Hearing.

1. Scope: As required by the conditions of a use, a public hearing shall be held by the board of supervisors after recommendation from the hearing administrator;

2. Recommendation of the hearing administrator:

a. The hearing administrator shall conduct a public hearing in accordance with Type 1 hearing procedures (Section 18.97.030F) and thereafter shall prepare a report for the supervisors;

b. The report of the administrator shall, at a minimum:

- 1) Classify the request as to its conformance with applicable county land use plans,
- 2) Analyze the expected impact of the proposed development on the site and surroundings including, but not limited to, the expected impact on endangered and threatened species of plants and animals,
- 3) Contain a recommendation to the board of supervisors,
- 4) Include the comments and conditions, if any, of other affected county departments and public agencies,
- 5) Include comments made at the public hearing;

c. The report shall be available for public inspection fifteen days prior to the date of supervisor's public hearing;

3. Transmittal: Within thirty days after the public hearing, the planning and development services department shall transmit the report and recommendations of the administrator to the supervisors;

4. Hearing:

a. After proper public notice (refer to Section 18.97.030E), the supervisors shall hold a public hearing on the application, at which all interested parties may appear and shall be heard;

b. The supervisors may continue a public hearing, for a definite time not to exceed three months, on own initiative or at the request of the applicant or affected property owners;

c. The supervisors may require that additional information be presented;

5. Decision of the supervisors: Approval of a conditional use permit shall be subject to the preliminary development plan and any other reasonable requirements deemed necessary by the supervisors. The permit shall be effective when all requirements of approval have been satisfied.

#### H. Type 3 Permit Hearing.

1. Scope: As required by the conditions of a use, a public hearing shall be held by the board of supervisors after recommendation from the planning and zoning commission;

2. Staff report by the hearing administrator:

a. The hearing administrator shall prepare for the commission a report that shall, at a minimum:

1) Classify the request as to its conformance with applicable county land use plans,

2) Analyze the expected impact of the proposed development on the site and surroundings including, but not limited to, the expected impact on endangered and threatened species of plants and animals,

3) Contain a recommendation to the commission,

4) Include the comments and conditions, if any, of other affected county departments and public agencies;

b. The report shall be available for public inspection fifteen days prior to the date of the commission public hearing;

3. Commission public hearing: The commission shall conduct a public hearing in accordance with Section 18.97.030F.

4. Transmittal: Within thirty days after the public hearing, the planning and development services department shall transmit the report and recommendations of the administrator and the planning and zoning commission to the supervisors, who shall hold a public hearing in accordance with Section 18.97.030G4.

5. Decision of the supervisors: In accordance with Section 18.97.030G5.

I. Development Plan Requirement. An approved development plan in accordance with Chapter 18.71 (Development Plan) shall be required prior to the issuance of a conditional use permit.

#### J. Time Limits and Time Extensions.

1. Time limit on conditional use approval:

a. Approval for a conditional use shall expire if a conditional use permit is not obtained within nine months of the date of approval;

b. A new conditional use permit application is required after the expiration of the initial approval, unless a time extension has been granted;

c. Appeal from the approval of the use shall suspend the running of the time limit during the period of appeal;

2. Extension of approval time limit: A request for a single three-month time extension of approval may be made in accordance with Section 18.91.100C (Rezoning);

3. Time limit on conditional use permits:

a. A conditional use permit shall be valid for the duration of the conditional use, provided the use remains in conformance with the terms of approval;

b. If a conditional use is discontinued for more than twelve months, the permit shall be deemed null and void, and reapplication for a new conditional use permit shall be necessary. (Ord. 2001-103 § 2, 2001; Ord.



1999-79 § 1 (part), 1999; Ord. 1986-127 § 1 (part), 1986; Ord. 1986-41 § 1 (part), 1986; Ord. 1985-141 § 1 (part), 1985)